



1617  
Pfw

PTO/SB/21 (02-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)		Application Number	10/079443
		Filing Date	February 19, 2002
		First Named Inventor	Ying Ma
		Art Unit	1617
		Examiner Name	Edward J. Webman
Total Number of Pages in This Submission	1	Attorney Docket Number	46847-00007USPT

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Postcard Acknowledgment
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)		
<input type="checkbox"/> Response to Missing Parts/Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	JENKENS & GILCHRIST, A PROFESSIONAL CORPORATION Lekha Gopalakrishnan
Signature	
Date	August 16, 2004

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.	
Dated: August 16, 2004	Signature:  (Marcy Overstreet)



I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: August 16, 2004 Signature: Marcy Overstreet  
(Marcy Overstreet)

Docket No.: 46847-00007USPT  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Ying Ma et al.

Application No.: 10/079443

Confirmation No.: 9165

Filed: February 19, 2002

Art Unit: 1617

For: MESOPOROUS COMPOSITIONS FOR USE IN  
DRUG DELIVERY

Examiner: Edward J. Webman

**RESPONSE TO RESTRICTION REQUIREMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed July 16, 2004, Applicants hereby provisionally elect claims 1-15 for continued examination, with traverse.

The Examiner has required restriction between claims 1-15 in Group I, drawn to a method of making, classified in class 264, subclass 41, and claims 16-38 in Group II, drawn to a composition, classified in class 424, subclass 484.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in a single application (37 CFR 1.142(a)). In the present case, although the claimed subject matter may be classified in different classes, the inventions are not independent. The claims in Group I *i.e.*, claims 1-15 are directed to a process of preparing a mesoporous composition. The claims in Group II *i.e.*, claims 16-38 are directed to a mesoporous composition. The scope of the method claims in Group I is equivalent to the scope of the composition claims in Group II. As such, there is no additional burden on the part of the Patent Office to keep the claims of Group I together with the claims of Group II.

According to MPEP § 803, if the search and examination of patent claims can be made without serious burden, the examiner **must** examine it on the merits, **even though the application includes claims to independent or distinct inventions** (emphasis added). For this reason, Applicants respectfully request the withdrawal of the restriction requirement between Groups I and II, as there is no additional burden to search and examine the two groups of claims.

If the Examiner is aware of another method to make the composition as claimed, using a process which is materially different from that set forth in the restricted claims, Applicant respectfully requests the Examiner to substantiate his position in greater detail. Otherwise, it is respectfully requested that the restriction requirement be withdrawn, and that each of claims 1-38 presently pending in this application be examined.

Examiner has held claims 7 and 12 to be generic and has requested Applicants to elect a single disclosed species for the purposes of prosecution. Applicants elect "water" as a first solvent for prosecution of generic claim 4 on the merits and "water" as a second solvent for prosecution of generic claim 12 on the merits. This election is being made only in the event that such generic claims are eventually held to be non-allowable.

No fees are believed to be due in connection with this paper as this response is being timely filed. However, if any fees are due in connection with this filing, the Commissioner is authorized to charge Deposit Account No. 10-0447 (Ref. No. 46847-00007USPT) for the required amount

Dated: August 16, 2004

Respectfully submitted,

By Lekha Gopalakrishnan

Lekha Gopalakrishnan

Registration No.: 46,733

JENKENS & GILCHRIST, A PROFESSIONAL  
CORPORATION

1445 Ross Avenue, Suite 3200

Dallas, Texas 75202

(214) 855-4500

Attorneys For Applicant